



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2004

Ms. Alice Caruso
Assistant Disclosure Officer
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2004-3489

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200466.

The Texas Workforce Commission (the "commission") received a request for copies of the entire commission file relating to the claim for unemployment compensation filed by a named individual. You state that the commission will be releasing some of the requested information to the requestor upon receipt of payment. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). You inform us that the commission received the request for information on February 5, 2004. Therefore, the commission had until February 20, 2004 to request a decision from this office as to whether the requested information must be disclosed to the requestor. The commission did not request a decision from us with regard to whether the requested information must be disclosed to the requestor until February 26, 2004. Therefore, we find that the commission failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(b) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Although you assert that the submitted information is excepted pursuant to section 552.107 of the Government Code, this is a discretionary exception and is not a compelling reason to overcome the presumption that the information at issue is public. *See Open Records Decision Nos. 676 at 12 (2002)* (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure). Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See Open Records Decision Nos. 630 at 4 (1994)* (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, none of the submitted information may be withheld under section 552.107. However, because section 552.101 of the Government Code can provide a compelling reason for withholding information, we will address your argument under that exception.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101*. This section encompasses information made confidential by other statutes. You claim that the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with federal regulations. Section 603 of title 20 of the Code of Federal Regulations provides that "claim information" in the files of a state unemployment compensation agency may be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See 20 C.F.R. §§ 603.1 et seq.; see also Open Records Decision No. 476 at 4 (1987)*. Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies, such as the commission, must protect the confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit the commission from disclosing this information. *See Open Records Decision No. 476 at 4 (1987)*.

You also state that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the “department”) in administering state unemployment insurance programs and that a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. You do not indicate, nor does it appear, that any of the release provisions specified in that directive are applicable in this instance. Based on our review of your arguments and the information at issue, we find that the submitted information is confidential under federal law. Accordingly, we conclude that the commission must withhold the submitted information from disclosure in its entirety pursuant to section 552.101 of the Government Code, unless otherwise authorized to release the information under part 603 of title 20 of the Code of Federal Regulations or UI Program Letter No. 34-97.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

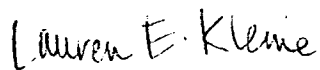
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 200466

Enc. Submitted documents

c: Ms. Jennifer A. Oyen
Legal Department
Continental Airlines
1600 Smith Street, 41st Floor HQSLG
Houston, Texas 77002
(w/o enclosures)